



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2005

Mr. Ronnie H. Wall
Associate General Counsel
Texas Tech University System
P.O. Box 42021
Lubbock, Texas 79409

OR2005-02628

Dear Mr. Wall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220891.

Texas Tech University (the "university") received two requests for the following information: 1) all records related to the "STCU International Workshop on Biotechnology Commercialization and Security" held in Tashkent, Uzbekistan in October 2003 and 2) all correspondence in the possession of Dr. Randy Allen and Dr. Ronald Chesser of the university with the Institute of Genetics and Plant Experimental Biology (the "institute"). You state that the university does not have any documents responsive to the portion of the request for communications between Dr. Randy Allen and the institute.¹ You indicate that you have released some responsive information regarding Dr. Chesser's communications with the institute. You contend that the remaining requested information is not subject to the Act. In the alternative, you claim that a portion of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. You also claim that the United States Department of State ("State Department") and the Civilian Research & Development Foundation ("CRDF") may wish to withhold the remaining requested information. *See generally* Gov't Code §§ 552.304 (providing that interested party may

¹ We note that the Public Information Act (the "Act") does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

submit comments stating why information should or should not be released), .305(d). We have considered all of the submitted arguments and the submitted information. We have also received comments submitted by the requestor. *See id.* § 552.304.

Initially, you claim that the submitted information is not public information as defined by section 552.002 of the Government Code, and thus is not subject to the Act. The Act applies only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002. Information is generally subject to chapter 552 when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. Open Records Decision No. 635 (1995).

You explain that two university professors and a postgraduate associate (collectively the "faculty") were invited by the State Department to participate in the STCU International Workshop on Biotechnology Commercialization and Security. You state that the faculty received funding from the State Department and CRDF to take part in the workshop and indicate that the university did not provide any funding to the faculty. You also inform us that the university did not require the faculty to participate in this workshop, and indicate that the faculty was not there on official university business. You state that the requested documents consist of "PowerPoint presentations and e-mails prepared or received solely for the [faculty] to participate in the workshop." You explain that this "information was not collected, assembled, or maintained under any known law or ordinance or in connection with the transaction of [the university's] official business." Furthermore, you state that although the submitted documents are in the possession of the faculty, the university does not have a right of access to these documents.

The requestor contends that the requested information are records of travel and presentations made by the faculty in the course of their official duties. The requestor states that these employees represented the university at the conference and served as representatives of the university on the advisory committee of the conference. Whether the faculty represented the university at the workshop on official university business is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable

as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Accordingly, we must accept the university's representation that the faculty was not on official university business. Based on your representations, we find that the submitted information was not collected, assembled, or maintained by or for the university under a law or ordinance or in connection with the transaction of official business. *See* Gov't Code § 552.002. Therefore, the submitted information is not subject to the Act and need not be released. Based on this finding, we do not reach your claim under section 552.101 for this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 220891

Enc. Submitted documents

c: Mr. Edward Hammond
The Sunshine Project
P.O. Box 41987
Austin, Texas 78704
(w/o enclosures)

Ms. Margaret P. Grafield
Director Office of IRM Programs and Services
A/RPS/IPS/RC
U.S. Department of State SA-2
Washington, D.C. 20522-8100
(w/o enclosures)

Mr. Charles T. Owens
President and CEO
U.S. Civilian Research and Development Foundation
1530 Wilson Boulevard, 3rd Floor
Arlington, Virginia 22209
(w/o enclosures)